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SERVICE DATE - FEBRUARY 13, 2004

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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-600]

Yakima Interurban Lines Association—Adverse Abandonment—In Yakima County, WA

On January 27, 2004, Kershaw Sunnyside Ranches, Inc. (Kershaw) filed an adverse application under 49 U.S.C. 10903 requesting that the Surface Transportation Board authorize the abandonment by Yakima Interurban Lines Association (YILA) of a portion of the Naches Line, which consists of approximately 11.29 miles of rail line between mileposts 2.97 at Fruitvale, WA, and milepost 14.26 at Naches, WA. The portion to be abandoned is an approximately one-mile segment of the line that crosses Kershaw's property. Mileposts for the segment are unavailable; however, the description of the line contained in the deed reads as follows:

Said strip of land being a certain strip of land seventy five feet wide across the E.2 of S.W. 4 and the S.W.4 of S.E.4 of Sec. 24 twp. 14 N. R. 17 E. W. M. [A]lso the N.W.4 of the N.W. 4 of Sec. 25 twp. 14 N. R. 17 E. W.M. being a strip of land seventy five (75) feet in width 37½ feet on each side of the center line of the railroad of said company as the same [is now] located and staked out across said premises, together with any and all additional widths that may be necessary to catch the slopes of the cuts and fills of the roadbed of said railroad.

The line traverses United States Postal Service ZIP Code 98908 and includes no stations.

Kershaw indicates that it filed the adverse abandonment application because the line has been inoperable, and there has been no traffic on the line, for approximately

seven years. It states that the line is in complete disrepair, as large sections of track are missing, portions of the track are suspended by the rail due to erosion of the roadbed, and portions of the line are covered with rocks and debris while others are covered with thick vegetation. It asserts that the vegetation on the line promotes the proliferation of noxious weeds and pests that are unsightly and are a fire hazard. Furthermore, Kershaw indicates that YILA has no current plans or funds to rehabilitate and maintain the line and there are currently \$750,000 in liens against the line. Applicant further states that no other public or private entity has shown any interest in assuming responsibility for the line. Kershaw argues that the burden of abandoning the line on shippers in the community would be minimal because shippers have used alternate transportation services for at least seven years and a major highway is located adjacent to the line. Should the Board grant abandonment authority here, Kershaw states that it will proceed in state court to obtain control of the property. This agency and its predecessor have long held that granting an adverse abandonment application would remove this agency's primary jurisdiction over the line, thereby subjecting the line to actions under state law.<sup>1</sup>

In a decision served in this proceeding on February 6, 2004, Kershaw was granted a waiver from some of the filing requirements of the Board's abandonment regulations at 49 CFR 1152 that were not relevant to its adverse abandonment application or that sought

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<sup>1</sup> See Modern Handcraft, Inc.—Abandonment, 363 I.C.C. 969 (1981); Kansas City Pub. Ser. Frgt. Operations Exempt.—Aban., 7 I.C.C.2d 216, 224-26 (1990); and Chelsea Property Owners—Aban.—The Consol. R. Corp., 8 I.C.C.2d 773, 778 (1992), aff'd sub nom. Conrail v. ICC, 29 F.3d 706 (D.C. Cir. 1994).

information not available to it. Specifically, Kershaw was granted waiver from the notice requirements at 49 CFR 1152.20(a)(2)(xii) and (a)(3), from the application requirements at 49 CFR 1152.22(a)(4), (a)(5), and (d), and from the consummation time periods at 49 CFR 1152.29(e)(2).<sup>2</sup>

Kershaw states that the line does not contain federally granted rights-of-way. Any documentation in Kershaw's possession will be made available promptly to those requesting it. The applicant's entire case in chief for abandonment was filed with the application.

The railroad has no employees on the line. Accordingly, there are no railroad employee interests that require labor protection.

Any interested person may file written comments concerning the proposed abandonment or protests (including protestant's entire opposition case) by March 12, 2004. All interested persons should be aware that, following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28) or for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by March 12, 2004. Each trail use request must be accompanied by a \$150 filing fee. See 49 CFR 1002.2(f)(27).

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<sup>2</sup> Because Kershaw had already satisfied a number of provisions for which it had requested a waiver, some of its waiver requests were denied as unnecessary. A fee waiver request had been denied earlier by the Board's Secretary and applicant was directed to comply with the provisions of 49 CFR 1152.24(f).

The line sought to be abandoned will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation.

Persons opposing the proposed adverse abandonment who wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Parties seeking information concerning the filing of protests should refer to section 1152.25.

All filings in response to this notice must refer to STB Docket No. AB-600 and must be sent to: (1) Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20424-0001; and (2) Sarah Wixson, Velikanje, Moore and Shore, P.S., 405 East Lincoln Ave., P.O. Box 22550, Yakima, WA 98907. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in section 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The waiver decision noted that Kershaw had sought a waiver from the

environmental requirements at 49 CFR 1152.22(f), arguing that this abandonment would not significantly alter the condition of the surrounding land and environment. However, the Board denied this request. It noted that, because Kershaw had already submitted the required environmental documentation to the Board's Section of Environmental Analysis (SEA), a waiver was not needed.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in abandonment or discontinuance proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to SEA at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

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Decided: February 6, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary